

C A M P A I G N   F O R

# ACCOUNTABILITY

July 10, 2018

By email: [FOIA@fec.gov](mailto:FOIA@fec.gov)

Federal Election Commission  
Attn: FOIA Requester Service Center  
1050 First Street NE  
Washington, DC 20463

**Re: Freedom of Information Act Request**

To Whom It May Concern:

Campaign for Accountability (“CfA”) seeks records from the Federal Election Commission (“FEC”) concerning ADR 725 (P-MUR 556), a matter regarding Mike Crapo for U.S. Senate and the committee’s treasurer, Paul Kilgore. CfA makes this request for records, regardless of format, medium or physical characteristics, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, 11 C.F.R. Part 4.

Specifically, CfA requests that the FEC produce the following within 20 business days:

1. Copies of all records for ADR 725 (P-MUR 556), including, but not limited to, all exhibits attached to a letter sent to the FEC on April 29, 2013, by Stephen Ryan, counsel for Mike Crapo for U.S. Senate.
2. Copies of all communications or other materials received by the FEC from, sent by the FEC to, or exchanged between the FEC and any representative(s) of Sen. Crapo or his campaign committee regarding ADR 725, as well as communications between or among employees of the FEC regarding ADR 725.

By way of background, on April 29, 2013, an attorney for Sen. Mike Crapo’s campaign committee, Mike Crapo for U.S. Senate, sent a letter to the FEC detailing a problematic loan made by the committee’s previous campaign manager.<sup>1</sup> In September 2008, the manager agreed to loan \$250,000 of the committee’s money to an LLC that intended to invest the money in a Nevada firm. The manager believed the loan would generate an eight percent return, which would then generate receipts for the committee.<sup>2</sup> The manager did not disclose the loan’s existence to the FEC, which resulted in a total loss for the committee.<sup>3</sup>

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<sup>1</sup> Letter from Stephen M. Ryan, Counsel for Mike Crapo for U.S. Senate, to Jeffrey S. Jordan, Office of Complaints Examination and Legal Administration, April 29, 2013, available at <http://eqs.fec.gov/eqsdocsADR/14190294820.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The April 2013 Letter indicates that in addition to the manager’s failure to disclose the loan to the FEC, neither the committee nor Sen. Crapo were informed of the loan or the failed investment until the manager left the committee in December of 2010.<sup>4</sup> On September 25, 2014, the FEC sent a letter to the committee regarding ADR 725 and informed the committee that it would “exercise its prosecutorial discretion...and close the file.”<sup>5</sup>

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If the FEC uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

In addition, please note that in conducting a “reasonable search” as required by law, the FEC must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered FEC’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>6</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but FEC’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that FEC use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with FEC to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

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<sup>4</sup> *Id.*

<sup>5</sup> <http://eqs.fec.gov/eqsdocsADR/14190294833.pdf>.

<sup>6</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>7</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>8</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>9</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>10</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>11</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with FEC before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and FEC can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [dstevens@campaignforaccountability.org](mailto:dstevens@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Ave S.E., #337, Washington D.C. 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

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<sup>7</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>8</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>9</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>10</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>11</sup> *Mead Data Central*, 566 F.2d at 261.

**Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 11 C.F.R. § 4.9, CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>12</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government.” 11 C.F.R. § 4.9(b)(1) The disclosure of the information sought under this request will document and inform the public regarding the operations of the federal government, including how officials conduct the public’s business. Specifically, these records are likely to contribute to greater public awareness of the process the FEC and elected officials use to settle disputes and alleged violations of federal law and regulations. The requested documents will help the public understand exactly what Crapo knew about the loan in question during the Crapo campaign, as well as what information the FEC had available to it when the settlement agreement was not approved, and the file was subsequently closed.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA’s financial interest. CfA is committed to protecting the public’s right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CfA’s financial interest. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org). Accordingly, CfA qualifies for a fee waiver.

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<sup>12</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

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**Conclusion**

CfA looks forward to working with the FEC to process this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me during the daytime at 202-780-5750. Further, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E. Stevens".

Daniel Stevens  
Executive Director